

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

DONALD F. GAY, Jr., *pro se*,

Debtor.

Case No. 06-50811

Chapter 13

Judge Thomas J. Tucker

**ORDER DECLINING TO VACATE “ORDER GRANTING RELIEF FROM THE
AUTOMATIC STAY, CO-DEBTOR STAY AND WAIVING THE PROVISION OF FRBP
4001(A)(3) AND GRANTING IN REM RELIEF”**

On August 11, 2006, Debtor filed a voluntary petition for relief under Chapter 13. On August 25, 2006, creditor Federal National Mortgage Association filed a “Motion For Relief From the Automatic Stay and Co-Debtor Stay And Entry of Order Waiving the Provision of FRBP 4001(A)(3) [sic] And Request for In Rem Relief” (Docket # 25). On August 28, 2006, the Court filed an Order, which in relevant part, shortened the response period for creditor’s motion to “10 days from the date of original service of the motion” and provided “that if no response is filed to Creditor’s Motion within 10 days, Creditor may submit” its order granting the relief in the motion. (*See* Docket # 29.) The Certificate of Service for the motion indicated that it was served on Debtor on August 25, 2006.

On September 13, 2006, Federal National Mortgage Association filed a Certification of No Response indicating that no one had filed an answer or written objection its motion but that on September 8, 2006, it “did receive a pleading entitled ‘Motion In Nature Of An Affidavit To Deny Motion For Relief From The Automatic Stay And Co-Debtor Stay And Entry Of Order Waiving The Provision Of FRBP 4001(a)(3) And Request For In Rem Relief.’” On September 14, 2006, the Court filed an “Order Granting Relief From The Automatic Stay, Co-Debtor Stay

And Waiving The Provision Of FRBP4001(a)(3) And Granting In Rem Relief,” terminating the automatic stay and the co-debtor stay regarding “property located at 14424 Woodmont Ave., Detroit, MI 48227-4709,” (“the Property”) (Docket # 41). The Order also granted *in rem* relief regarding the Property “so that [Federal National Mortgage Association] may proceed with it[s] state law remedies as to the [P]roperty despite any subsequent bankruptcy filings during the next 2 years from the date of the entry of [the] Order by any person now or in the future claiming an interest in the [P]roperty.” This relief was based on the fact that the Property had “been sold at a Sheriff’s Sale on February 9, 2005; and the redemption period [had] expired on August 9, 2005.”

The information in the Certification of No Response proved to be erroneous. On September 7, 2006, Debtor had filed a document entitled “Motion In Nature Of An Affidavit To Deny Motion For Relief From The Automatic Stay And Co-Debtor Stay And Entry Of Order Waiving The Provision Of FRBP 4001(A)(3) [sic] And Request For In Rem Relief,” timely responding to Federal National Mortgage Association’s motion to lift the automatic stay. However, due to an apparent clerical error in the Clerk’s office, Debtor’s response was not entered on the docket until September 14, 2006, and the Court was unaware that a response had been filed at the time it entered the September 14, 2006 Order.

Generally, under Fed. R. Civ. P. 60(a), incorporated into bankruptcy proceedings by Fed. R. Bankr. P. 9024, the Court would vacate an order it entered based on the erroneous assumption that no response to a motion had been filed. The Court concludes, however, that it is not appropriate to do so in this case, for the following reasons.

First, any error made by the Court in entering the September 14, 2006 Order based on the erroneous assumption that Debtor had not responded to it, was harmless because (1) the response

Debtor filed on September 7, 2006 does not state any valid grounds for denying the motion; and (2) the September 14, 2006 Order was based not only on the Certificate of No Response but also on the fact that prior to the bankruptcy, the Property had been sold at a Sheriff's Sale and the redemption period had expired. The September 7, 2006 response filed by Debtor does not dispute this. The Property therefore is not property of the estate and is not subject to the automatic stay.

Second, in Paragraph 9 of Debtor's September 7, 2006 response, he admits that he has no interest in the Property. There, he states: "Donald Franklin: Gay III-El has the only valid claim on the land."

Third, in a prior case that Debtor filed (Case No. 06-46310), the Debtor also admitted that he had no interest in the property. In the previous case, Federal National Mortgage Association filed a motion for relief from stay regarding the Property. The Court held a hearing on that motion on July 6, 2006. At the hearing, Debtor admitted that he did not own any interest in the Property and identified another person, his son, who he claimed owned the Property. This further confirms that Debtor has no interest in the Property, and that the automatic stay does not apply.

For these reasons, the Court will not vacate its September 14, 2006 "Order Granting Relief From The Automatic Stay, Co-Debtor Stay And Waiving The Provision Of FRBP4001(a)(3) And Granting In Rem Relief."

IT IS SO ORDERED.

Date: September 21, 2006

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge